

STATE PROCUREMENT OFFICE

PROGRAMS EXEMPT FROM CHAPTER 103D, HRS

DEPARTMENTS AND AGENCIES:

GOVERNOR

Civil Defense and Emergency Act

§128-10 Other powers. “(10) ...Chapter 103D,...shall not apply to any civil defense or other emergency functions...”

Labor Disputes; Stevedoring Industry

§382-3 Government operations. “After the issuance of a proclamation pursuant to section 382-2 and during the emergency thereby proclaimed... The governor may make contracts without regard to chapter 103D....”

ACCOUNTING AND GENERAL SERVICES

§1-28.5 Publication of notice. “(a) Notwithstanding any other statute, law, charter provision, ordinance, or rule to the contrary, whenever a government agency is required to give public notice or to publish notice, the notice shall be given only as follows: (d) This section shall not apply to notices required by chapters 103D....”

§196-22 State energy projects. “...the comptroller or the senior official of the department of accounting and general services, along with the director of finance, may exempt a state energy project from the advertising and competitive bidding requirements, of section 196-21 or section 36-41 and chapters 103 and 103D, if the comptroller deems exemption appropriate for energy projects with proprietary technology or necessary to meet the goals of the legislature....”

§41D-2 Responsibilities of the comptroller. “(b) The requirements of chapter 103D shall not apply to the acquisition of insurance by or for state agencies.”

Central Services Division

§36-35 State educational facilities repair and maintenance account. “(e) The expenditure of funds for any project with an estimated total cost of less than \$100,000 shall be exempt from chapter 103D....”

§36-36 School physical plant operations and maintenance account; maintenance schedule. “(d) The expenditure of funds made under this Act for any project with an estimated cost of less than \$100,000 shall be exempt from chapter 103D....”

AGRICULTURE

Agribusiness Development Corporation

§163D-6 Subsidiaries; establishment. “...(4) No investment, loan, or use of funds by the corporation or a subsidiary corporation vested with the assets shall be subject to chapter 42D, 42F, 103, or 103D; and ...”

§163D-15.5 Waiahole water system revolving fund. “(b) No expenditure, use, or transfer of funds from the Waiahole water system revolving fund by the corporation shall be subject to chapter 42D, 42F, 103, or 103D.”

§163D-17 Hawaii agricultural development revolving fund; established; use of corporation funds. “(f) No investment, loan, grant, or use of corporate funds for the purpose of this chapter shall be subject to chapter 42F or 103D.”

BUDGET AND FINANCE

§37D-2 Financing agreements. “(5) The department shall not be subject to chapter 103D and any and all other requirements of law for competitive bidding for financing agreements.”

§39A-32 Department powers as to health care facilities. “(1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to enter into and carry out a project agreement....”

§39A-72 Department powers as to manufacturing enterprises. “(1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to enter into and carry out a project agreement....”

§39A-112 Department powers as to processing enterprises. “(1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to enter into and carry out a project agreement....”

§39A-152 Department powers as to industrial enterprises. “(1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to enter into and carry out a project agreement....”

§39A-192 Department powers as to energy projects. “(1) Notwithstanding and without compliance with section 103-7 and chapter 103D but with approval of the governor to enter into and carry out a project agreement,....”

[§196-22] State energy projects. “...the comptroller or the senior official of the department of accounting and general services, along with the director of finance, may exempt a state energy project from the advertising and competitive bidding requirements, of section 196-21 or section 36-41 and chapters 103 and 103D, if the comptroller deems exemption appropriate for energy projects with proprietary technology or necessary to meet the goals of the legislature.”

Hawaii Employer-Union Health Benefits Trust Fund

§87A-18 Long-term care benefits plan; carrier or third-party administrator. “(c) Without regard to chapter 103D, the board may contract with a carrier to provide fully insured benefits or with a third-party administrator to administer self-insured benefits.”

§87A-20 Selection of benefits plan carriers or third-party administrators.

“Procurement of a carrier or third-party administrator for any benefits plan shall be exempt from chapter 103D.”

§87A-24 Other powers. “(7) Without the necessity of complying with the requirements of chapter 103D, retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of the chapter.”

BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

§201-85 Exemptions. “Subject to the approval of the director of budget and finance, the department may be exempted from the following state laws to the extent necessary for the conduct of its business in operating out-of-state offices: (2) Chapter 103D, relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended.”

Hawaii Tourism Authority

§201B-12 Exemption of authority from taxation and Hawaii public procurement code. “(b) The authority shall not be subject to chapter 103D and any and all other requirements of law for competitive bidding for project agreements, construction contracts, lease and sublease agreements, or other contracts unless a project agreement with respect to a project otherwise shall require.”

Hawaii Community Development Authority

§206E-182 Powers. “(1) With the approval of the governor, and without regard to chapter 103D, enter into a special lease or an amendment or supplement thereto whereby the authority agrees to construct, acquire, or remodel and furnish or equip a special facility for the use by another person to a special facility lease;”

High Technology Development Corporation

§206M-3 Powers. “(b) The corporation shall be exempt from chapters 102 and 103D.”

§206M-42 Powers. “(7) Agree with the other party to the special facility lease... Neither the undertaking by the other person nor the acceptance by the development corporation of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D.”

Natural Energy Laboratory of Hawaii Authority

§227D-7 Exemption of authority from taxation and competitive bidding. “(b) The authority shall not be subject to any requirements of law for competitive bidding, including the requirements of Chapter 103 and 103D for project agreements, construction contracts, retail concession or tour-related contracts, or other contracts unless a project agreement with respect to a project or research and technology park shall require otherwise.”

COMMERCE AND CONSUMER AFFAIRS

Division of Financial Institutions

§412:12-108 Examinations; periodic reports; cooperative agreements; assessment of fees. “(d) The commissioner may enter into contracts.... Any contract executed under this section shall be exempt from the requirements of chapter 103D.”

§412:13-224 Supervision and enforcement. “... the commissioner may: (4) Enter into contracts, exempt from the requirements of chapter 103D, with any bank supervisory agency... to engage the services of the agency’s examiners at a reasonable rate of compensation....”

Hawaii Hurricane Relief Fund

§431:22-102 Loss mitigation grant fund. “... Disbursements from the loss mitigation grant fund shall not be subject to chapter 42F, 91, or 103D.”

§431P-16 Establishment of trust finds. “(a)... Disbursements from the trust funds shall not be subject to chapter 103D and shall be made in accordance with procedures adopted by the board.”

EDUCATION

§302A-415 Motor vehicles for driving instructions; purchase and sale. “Chapter 103D to the contrary notwithstanding, the department may enter into agreements with any dealer or company for the purchase of motor vehicles for driving instruction in the public schools if the agreements provide that the department pay \$1 for each motor vehicle, take title thereto in the name of the State, and agree to resell it to the seller for \$1 within sixty days following the last day of the school year.”

§302A-1184 New century charter schools; exemptions. “New century charter schools shall be exempt from the state procurement code, chapter 103D.

HEALTH

Hawaii Health Systems Corporation

§323F-7 Duties and powers of the corporation.“(30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D.”

HUMAN SERVICES

Housing and Community Development Corporation of Hawaii

§201G-13 Development of property; additional powers. “Notwithstanding any provision to the contrary, whenever the bids submitted for any development or rehabilitation project authorized pursuant to subparts A, B, G, and H of part II exceed available funds, the corporation, with approval of the governor, may disregard the bids and enter into an agreement to carry out the project, or undertake the project or participate in the project under the agreement, without regard to chapter 103D; provided that the total cost of the agreement and the corporation’s participation, if any, shall not exceed the amount of funds available for the project; provided further that if the agreement is with a nonbidder, the scope of the project under agreement shall remain the same as that for which bids were originally requested.”

§201G-114 Additional powers. “Notwithstanding and without compliance with section 103-7 and chapter 103D but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this chapter.”

§201G-455 Program administration. “...The selection of provider agencies to administer homeless facilities, or any other program for the homeless authorized by this part, shall not be subject to chapters 42F, 102, 103, 103D, and 103F. ...”

LABOR AND INDUSTRIAL RELATIONS

Workforce Development Division

§383-128 Employment and training fund established. “(d) Contracts pursuant to subsection (b), shall be exempt from chapters 103D and 103F so funds for these services may be expended in a timely manner to effectuate the purposes of this section. All other disbursements shall be in accordance with chapters 103D and 103F.”

PUBLIC SAFETY

§329-58 Education and research. “(b) The department of public safety may enter into contracts for educational and research activities without performance bonds and without regard to chapter 103D.”

Correctional Industries

§354D-4 Powers and duties of the director. “(8) Enter into any contract or agreement and execute all instruments consistent with this chapter and exempt from chapter 103D.”

§354D-8 Business operations; budget. “Notwithstanding any other provision to the contrary, purchases by the administrator for the manufacture of any goods or services shall be exempt from the public bidding requirements of chapter 103D.”

TAXATION

§103-53 Contracts with State or counties; tax clearances, assignment. “(e) This section shall not apply to: (8) Requirements of chapter 103D.”

§245-23 Department to furnish stamps; designs, specifications, and denominations; procurement. “... Purchase by the department of stamps from a vendor shall be exempt from the requirements of chapter 103D.”

§255D-4 Authority to enter agreement. "... Other actions authorized by this section include but are not limited to the adoption of rules not subject to chapter 91 and the joint procurement not subject to chapter 103D, with other member states, of goods and services in furtherance of the cooperative agreement."

TRANSPORTATION

Airports Division

§261-52 Powers. "(1) With the approval of the governor, and without public bidding, enter into a special facility lease agreement or an amendment or supplement thereto whereby the department agrees to construct, acquire, or remodel and furnish or equip a special facility...."

Harbors Division

§266-52 Powers. "(1) With the approval of the governor, and without public bidding, enter into a special facility lease agreement or an amendment or supplement thereto whereby the department agrees with another person engaged in maritime and maritime related operations...."

UNIVERSITY OF HAWAII

§304-4 Powers of regents; official name. "(d) The board shall develop internal policies and procedures for the procurement of goods, services, and construction,.. but not subject to chapter 103D...."

College of Continuing Education and Community Service

§304-8.94 Conference center revolving fund. "... The dean ... is authorized to expend funds from the revolving fund for all costs associated with conducting conferences, seminars, and courses..., without regard to chapter 103D...."

Research Corporation of the University of Hawaii

§307-4 Research corporation excepted from certain state laws. "(2) Chapter 103D. ..., relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended."

LEGISLATIVE REFERENCE BUREAU

§23G-17 Printing; contracts. "The office of the legislative reference bureau shall cause sufficient copies of the session laws, supplements, and replacement volumes to be printed. The bureau may contract for the publications with or without regard to the laws governing public contracts or public printing."

ALL POLITICAL SUBDIVISIONS

Civil Defense and Emergency Act

§128-13 Power and authority of local organizations. "(3)...Chapter 103D, ... shall not apply to any civil defense function..."

Exemptions pursuant to Section 103D-102 (b), Hawaii Revised Statutes:

“(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
 - (A) For grants or subsidies as those terms are defined in section 42F-101, made by the state in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
 - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
 - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
 - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
 - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
 - (G) To governmental bodies of the State;
 - (H) As loans, under loan programs administered by a governmental body;
 - (I) For contracts awarded in accordance with the provisions of chapter 103F; and
 - (J) For grants awarded by the Office of Hawaiian Affairs in accordance with the provisions of chapter 10.
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
 - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
 - (B) Works of art for museum or public display;
 - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
 - (D) Meats and foodstuffs for the Kalaupapa settlement;
 - (E) Opponents for athletic contests;
 - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
 - (G) Performances, including entertainment, speeches, and cultural and artistic

- presentations;
 - (H) Goods and services for commercial resale by the State;
 - (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
 - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State;
 - (K) Financing agreements under chapter 37D; and
 - (L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
- (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
- (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
 - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

Pursuant to §103D-102 (b)(4)(L), HRS, and §3-120-4, HAR, Exhibit A, in Chapter 3-120, HAR, provides list of additional exemptions which the procurement policy board has also determined to be exempt from chapter 103D, HRS:

<u>Exemption Number</u>	<u>Exemption</u>
1.	Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases;
2.	Services of printers, rating agencies, support facility providers, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
3.	Services of lecturers, speakers, trainers, and scriptwriters;
4.	Services of legal counsel, guardian ad litem, psychiatrists, and psychologists, when required by interpreters, in criminal and civil proceedings;
5.	Fresh meats and produce;
6.	Insurance to include insurance broker services;
7.	Animals and plants;
8.	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
9.	Food and fodder for animals;
10.	Facility costs for conferences, meetings, and training sessions;
11.	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, professional publications;
12.	Professional consultant services as required under Chapter 658, HRS;
13.	Interpreter services;
14.	Procurement of repair services when dismantling is required to assess the extent of repairs;
15.	Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses; and
16.	Radio and television airtime when selection of station is to be made by current audience demographics.